

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY DUPLICATE ~~FILED~~

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C., 20554

In the Matter of)
)
)
Review of the Commission's)
Broadcast and Cable EEO Rules and Policies)
)
)

RECEIVED

APR 16 2002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

MM Docket Nos. 98-204
FCC 01-363

RECEIVED

APR 16 2002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**COMMENTS OF THE
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS**

TABLE OF CONTENTS

- I. INTRODUCTION AND SUMMARY
- II. CLEAR AND MEANINGFUL EEO RULES AND POLICIES CONTINUE TO BE NECESSARY AND APPROPRIATE TO COMBAT DISCRIMINATION IN BROADCAST AND CABLE EMPLOYMENT
 - A. The Commission's Re-affirmation of the Anti-Discrimination Prong of the EEO Rules Is Critical For the Success of the Commission's Statutory Mission
 - 1. Minorities and Women Still Face Discrimination and Reduced Employment Opportunities in Broadcast And Cable Employment
 - 2. Ownership Consolidation Has Exacerbated the Problems Minorities and Women Face in Broadcast and Cable Employment
 - 3. The Commission Must Retain its Discretion to Take Action on Individual Complaints of Employment Discrimination
 - B. The Commission's Proposed EEO Rules Requiring Broad Outreach And Recruitment Efforts Are Needed, But Should Be Improved
 - 1. The EEO Rules Should Be Clarified to Mandate Meaningful Participation in a Variety of Outreach and Recruitment Efforts
 - 2. The EEO Rules Should Suggest Additional Outreach and Recruitment Options
- III. THE RECORD KEEPING REQUIREMENTS SHOULD BE CLARIFIED SO AS TO MAXIMIZE THEIR EFFECTIVENESS AS BOTH A METHOD OF OUTREACH AND A SIMPLE, NON-BURDENSOME MEASURE OF DEMONSTRATING COMPLIANCE
 - A. Licensees Should Be Required to Maintain All Information about their Outreach and Recruitment Efforts In Their Public Files
 - B. Licensees Should Be Required to Maintain Contemporaneous,

Up-To-Date Records in Their Public Files

- C. The Commission Should Require Licensees to Identify Themselves in Their Form 395(B) Submissions, and the Commission Should Prepare Annual, Industry-Wide Summaries of the Data Collected for Public Review

IV. THE COMMISSION SHOULD CONDUCT HEARINGS ON AGE DISCRIMINATION IN BROADCAST AND CABLE EMPLOYMENT.

V. CONCLUSION

I. INTRODUCTION AND SUMMARY

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"), a national labor organization with a membership of over 80,000 professional employees working in the news and broadcast, entertainment, advertising and sound recordings industries. On behalf of its members, AFTRA submits these comments in response to the Commission's Second Notice of Proposed Rule Making, MM Docket Nos. 98-204, FCC 1-363, issued on January 11, 2002, proposing new broadcast and cable Equal Employment Opportunity (EEO) rules and policies.

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers, and other on-air and off-air broadcast employees working in television and radio at networks and in stations in markets of varying size throughout the United States.

3. Entities that employ AFTRA broadcast members include ABC, CBS, NBC and Fox and their owned and operated stations, as well as local radio and television stations owned by more than 40 independent and group owners. AFTRA maintains over three hundred collective bargaining agreements with these employers nationwide.

4. AFTRA has a uniquely "inside" view of the continued need for meaningful broadcast and cable EEO rules and policies because AFTRA represents those individuals who have had first-hand experience with the intentional and unintentional discrimination that exists with respect to hiring, promotion, and professional advancement in the broadcasting industry.

5. Based on the first-hand experience of its members, AFTRA agrees with the Commission that it is necessary and appropriate for the Commission to readopt its rule prohibiting discrimination in the broadcast and cable industries. The numbers of minorities and women in these industries have dropped in years since the Commission's former EEO rules were suspended. As employment opportunities shrink as a result of station ownership consolidation and other recent trends in these industries, we see the risk of discrimination increasing.

6. Also, AFTRA agrees with the Commission's proposed requirements that broadcast and cable entities establish and maintain EEO programs that emphasize broad outreach and recruitment for jobs. However, AFTRA believes that the menu of options needs clarification and that there are additional options that should be added to the proposed menu of outreach and recruitment choices. Specifically, AFTRA submits that the new EEO rules should provide that (i) organizations requesting notification of job vacancies should be required to make their request only once during a licensee's license period, and thereafter automatically be sent notices of vacancies; (ii) outreach options be clarified to ensure meaningful efforts by licensees; and (iii) licensees should conduct regular, internal training programs on discrimination issues for existing staff.

7. Due to the seriousness of the problem of discriminatory hiring and other employment practices in broadcasting, AFTRA urges the Commission not to defer its authority and responsibility to investigate individual complaints of discrimination pending review by the EEOC or a court.

8. Further, AFTRA submits that the record-keeping requirements proposed in the

Second NPRM are a simple, non-burdensome method of achieving two statutory goals: (i) to permit licensees to demonstrate compliance with the regulatory scheme and (ii) to assist in promoting broad outreach and recruitment by giving all potential job applicants vital information on how to obtain employment at networks and stations. However, the record-keeping rules should be clarified and amended to provide that all information about a licensee's outreach and recruitment efforts be placed in a licensee's public file, and that such information is placed in the public file contemporaneously with the efforts taken.

9. AFTRA also agrees that the Commission is statutorily mandated to collect the data requested in FCC Form 395-B on the race, ethnicity and gender of their workforces, and that the collection of this data on a complete and industry-wide basis is a necessary part of the regulatory scheme. However, AFTRA believes that this critically important data would be suspect and unreliable if licensees were permitted to make this filing on an anonymous basis. Additionally, the collection of this data is so critically important, AFTRA believes that the Commission has the responsibility of preparing annual reports summarizing industry-wide data, not just for Congress, but for the public as well.

10. Finally, because of evidence of a growing widespread industry practice of discrimination against on- and off-air broadcast talent based on age, AFTRA calls upon the Commission to hold hearings on the question of age discrimination in the broadcasting and cable industries.

II. CLEAR AND MEANINGFUL EEO RULES AND POLICIES CONTINUE TO BE NECESSARY AND APPROPRIATE TO COMBAT DISCRIMINATION IN BROADCAST AND CABLE EMPLOYMENT

A. The Commission's Re-affirmation of the Anti-Discrimination Prong of the EEO Rules Is Critical For the Success of the Commission's Statutory Mission

11. As Congress and the courts have repeatedly acknowledged, combating discrimination and promoting diversity in broadcast and cable employment are critical and essential parts of the Commission's statutory mandate to ensure that all licensees serve the public interest. See 47 U.S.C. 334 (a)(1); Fox Television Stations, Inc. v. Federal Communications Commission, 280 F.3d 1027, 1042 (D.C. Cir. 2002) ("In the context of the regulation of broadcasting, 'the public interest' has historically embraced diversity (as well as localism).") Pursuant to this statutory mandate, the Commission issued EEO rules and policies that for many years helped to open up broadcast employment to women and minorities.

12. Since 1998, however, when the former EEO rules were suspended as a result of court decisions finding constitutional infirmities with the rules, AFTRA has seen these gains lost in a number of different broadcast markets nationwide. Moreover, in this same period, the industry has been transformed by ownership consolidation, resulting in severe cost cutting and the elimination of jobs and programming, thereby exacerbating the employment situation for minorities and women.

13. Accordingly, AFTRA agrees with the Commission's decision to re-adopt EEO rules and policies that unequivocally prohibit discrimination on the basis of race, color, religion, national origin or sex, in the hiring and promotion of all employees in the broadcasting and cable industries, Second NPRM ¶18, and commends the Commission's efforts to craft new EEO rules and policies consistent with the court's decision in

MD/DC/DE Broadcasters Association v. FCC, 236 F.3d 13 (DC Cir. 2001), cert. denied, *MMTC v. MD/DC/DE Broadcasters Association*, 122 S.Ct. 920 (2002), Second NPRM ¶21.

1. Minorities and Women Still Face Discrimination and Reduced Employment Opportunities in Broadcast And Cable Employment.

14. Although AFTRA members do report that at certain stations, in certain cities, diversification and broad outreach continue to be priorities for station management, these situations are the exception. AFTRA members report that, in the years since the former EEO rules were suspended, there have been sharp decreases in the number and quality of full-time job vacancies, a substantial decrease in efforts by licensees to engage in broad outreach for job applicants, and a return of insular, "word of mouth" hiring practices that tend to exclude women and minorities from applicant pools. Also, AFTRA members report far fewer minorities and women in management and other positions of authority and influence at stations and networks, and a decrease in programming serving local and minority communities.

15. Statistics from recent studies confirm AFTRA's experience that the overall numbers of minorities and women employed as on-air and off-air talent, and in broadcast management, are decreasing. In February, 2002, a study commissioned by the University of Southern California's Walter Cronkite School of Journalism showed that women and minorities reporting for the network television evening news programs of ABC, CBS and NBC dropped in the last few years: "During 2001, the percentage of women decreased for the third consecutive year from a high of 33% in 1998 to 29% of correspondents [in 2001]. The number of minorities rose by one percentage point to 16% of the

correspondents corps in 2001, but remained below the high of 20% reached in 1998." *See 2002 Network TV Correspondent Visibility Report, Walter Cronkite School of Journalism*. The annual survey conducted by the Radio-Television News Directors Association and Ball State University reports a similar drop in the overall numbers of minorities and women in management positions. *See 2001 Women and Minorities Survey, Communicator, July/August 2001, also available at www.rtnda.org*. Also, the National Association of Hispanic Journalists (NAHJ) reports a sharp decrease in the number of stories about Latinos aired in evening network newscasts, from 1.3% in 1999 to 0.53% in 2000. *See Mendez-Mendez, Serafin and Alverio, Diane, "Network Brownout 2001: The Portrayal of Latinos in Network Television News, 2000," December 2001, Report prepared for NAHJ, available at www.nahj.org*.

16. As will be discussed more fully below, the risk of discrimination appears to be rising in part because of the pressures associated with ownership consolidation in the broadcast industry.

2. Ownership Consolidation Has Exacerbated the Problems Minorities and Women Face in Broadcast and Cable Employment

17. In the current deregulated business climate, relaxed broadcast ownership rules have permitted substantial consolidation of radio and television properties in broadcast markets. In this business climate, there has been concomitant emphasis in cost cutting and achieving economies of scale by the reduction of programming and staff. AFTRA has seen, and AFTRA members report, significant losses in the number of available jobs, with the closing of departments, eliminating of newscasts, cancellation of programming, and a sharp increase in the use of voice-tracking. Even large-scale layoffs are now not

uncommon. AFTRA members further report that minorities and women have been disproportionately affected in these waves of terminations and layoffs.

18. In this climate of few available jobs, AFTRA has also seen a return of the insular, “word of mouth” hiring practices that historically excluded women, minorities and others from applicant pools. It has now become widely perceived that only candidates with some “inside” connection to networks and stations will have any chance to compete for an available position. As courts have consistently found, even in circumstances where there is no intentional discrimination, such practices will result in the exclusion of women and minorities from applicant pools. *See Duffy v. Wolle*, 123 F.3d 1026, 1039 (8th Cir, 1997) (noting that absent conscious and affirmative outreach and recruitment efforts by broadcast entities, minorities and women tend to be excluded from consideration for broadcast employment); *Equal Employment Oppty. Comm'n Metal Serv. Co.*, 892 F.2d 341, 349-50 (3d Cir. 1990) (same); *Barnett v. W.T. Grant Co.*, 518 F.2d 543, 549 (4th Cir. 1975) (recognizing word-of-mouth recruiting tends to perpetuate homogenous workforce); *See also Black Broadcasting Coalition of Richmond v. Commission*, 556 F.2d 59, 62-63 (D.C. Cir. 1977) (finding station’s “passive acceptance” of referrals inadequate to ensure broad applicant pool); *Beaumont NAACP v. Commission*, 854 F.2d 501, 508 (D.C. Cir. 1988) (noting that low numbers of minorities employed at station caused in part by the station’s lack of outreach in minority communities).

19. Another disturbing and intolerable trend that AFTRA has witnessed since 1998 has been that broadcast and cable licensees have sharply reduced their participation in job fairs and other outreach and recruitment efforts. AFTRA members report that job fairs

sponsored by well-known organizations such as the National Association of Black Journalists (NABJ) and NAHJ have not been well attended by employers. Smaller broadcast entities have completely stopped attending, but even the larger companies have curtailed their participation. For example, attendees of the 1999 "Unity" conference in Seattle, Washington, which was the first job fair jointly sponsored by all of the major minority journalists associations, the NABJ, NAHJ, the Asian American Journalists Association of (AAJA), and the Native American Journalists Association (NAJA), reported that ABC did not staff any booths at the conference exhibition site.

20. In the current deregulated climate, where there are few available jobs and limited promotion opportunities, employer participation in outreach and recruitment efforts targeting minorities, women and other applicants who lack access to "inside" employment opportunities is extremely important. It is now more important than ever that licensees widely disseminate information about job openings to ensure that all qualified applicants, including minorities and women, hear about and are able to compete for all available positions. Strong and meaningful EEO rules and policies are needed now more than ever.

3. The Commission Must Retain its Discretion to Take Action on Individual Complaints of Employment Discrimination

21. The Commission seeks comment on whether it should retain its policy of generally deferring action on individual complaints of employment discrimination against broadcasters and cable entities pending final action by the Equal Employment Opportunity Commission (EEOC) or other government agencies and/or court established to enforce non-discrimination laws, except where the facts of a particular case so warrant.

Second NPRM, ¶ 19.

22. It is AFTRA's position that the Commission should not defer taking action on serious complaints of employment discrimination, even if such complaints are pending before the EEOC or a court, for the following reasons.

23. Despite some progress made by the EEOC in reducing its backlog, that agency it still facing a backlog of over 61,000 cases (both suggesting potential violations and those requiring further investigation) nationwide. *See Scorza, John, "EEOC Continues to Reduce Inventory of Employment Discrimination Cases," CCH Business Owners Toolkit, 2002, available at www.cch.com; "EEOC Job-Discrimination Complaints Soar," Associated Press, February 21, 2002, available at www.DiversityInc.com.* The EEOC cannot investigate or prosecute all meritorious claims of discrimination, and with this backlog, it is certainly not in a position to evaluate discrimination complaints for the purpose of ascertaining trends in any particular industry.

24. Moreover, the nature of discrimination complaints in the broadcasting and cable industries is somewhat distinct because certain industry or company-wide practices may elude individual enforcement or remedy. For example, as will be discussed further below, there have long been complaints of serious age discrimination in the employment practices of broadcast and cable employers. This problem appears to be worsening, and AFTRA calls upon the Commission to hold hearings on the matter.

25. The Commission is the agency uniquely qualified to investigate and address complaints of employment discrimination in the broadcast and cable industries, and it should carry out this role in a timely and effective fashion without waiting for any final

action by the EEOC on any particular complaint.

B. THE COMMISSION'S PROPOSED EEO RULES REQUIRING BROAD OUTREACH AND RECRUITMENT EFFORTS ARE NEEDED, BUT SHOULD BE IMPROVED

26. AFTRA agrees with the Commission that a regulatory scheme that requires broadcast and cable entities to engage in broad recruitment efforts is still both necessary and appropriate following *MD/DC/DE Broadcasters Association*. However, in order to be effective, certain items in the menu of options should be explained in more detail and additional options should be added to the menu.

1. The Proposed EEO Rules Should Be Clarified to Mandate Meaningful Participation in a Variety of Recruitment Efforts

27. In its Second NPRM, the Commission proposes that broadcasters and cable entities undertake two supplemental recruitment measures: (i) that broadcasters and cable entities provide notification of full time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers and (ii) that certain broadcasters engage in at least four outreach measures from a recommended menu list, which includes such activities as participation in job fairs, sponsoring internships and scholarships programs, designing mentoring programs to train station staff for advancement within a station, and coordination with organizations whose memberships draw substantially from communities of minorities and women. Second NPRM ¶16.

28. AFTRA believes that, with some modification, the requirement that licensees provide notification of all full-time job vacancies to requesting organizations, Second NPRM ¶27, will be effective in recruiting a wide pool of job applicants. Indeed, because

the Second NPRM grants licensees tremendous flexibility in how and where their outreach efforts are to be directed, this prong of the proposed policy ensures that job vacancies will also reach communities that a licensee may not consider including in its efforts. In order to make this option most effective, however, the Commission should make clear that once an organization requests that a station provide it with job announcements, it becomes part of a regular distribution list. Organizations should not need to repeat requests for job postings, and licensees should not be burdened by having to receive repeated communications, at least for the period of that station's license.

29. The second prong of the proposed EEO rules, consisting of a menu of suggested outreach and recruitment options also contains a number of important suggestions, but these options should be clarified and augmented so as to mandate meaningful participation.

30. First, in the options menu, the Commission urges licensees to attend, participate, and sponsor job fairs, both alone and in cooperation with organizations that include substantial participation of women and minorities, and to participate in other such programs hosted by educational or community organizations. Second NPRM ¶30. However, AFTRA members have consistently reported that when broadcast employers participate in such events (however infrequently), such employers are generally represented by lower level managers with no real authority to make hiring decisions. The Commission recognizes this problem in that it suggests, as one of the four possible options, that employing entities send to job fairs representatives with "substantial authority in the making of hiring decisions." Second NPRM ¶ 30. In order to ensure the

effectiveness of licensee's option selections, the Commission should mandate that where a licensee participates in any way, and in any type, of job fair, that this participation be undertaken by a company representative with substantial authority for hiring decisions.

31. Second, further clarification is needed on menu options dealing with job postings.

The Second NPRM also suggests that licensees post available jobs through the Internet, in "job banks" or in "newsletters of media trade groups whose membership includes substantial participation of women and minorities." Second NPRM ¶ 30. The problem with such postings, however, is that the general perception among employees and applicants is that jobs "posted" on the Internet and in "job banks" are illusory or "just for show" because the positions have already been filled. To be more effective, the Commission should explicitly direct that job vacancies be posted for a period of time before the selection of a permanent hire. As will be discussed more fully below, licensees should also be required to place in their public files copies of the announcements of job vacancies (indicating where such notices were sent), specific information about organizations that received the announcements and all recruitment sources used, and the dates of permanent hires. Having this information available for review by potential job applicants would assist in demonstrating to the public that jobs are not posted before being filled.

32. Third, in response to the Commission's request for comments on the current situation of internet recruitment, Second NPRM 26, AFTRA submits that licensees not be permitted to rely on the Internet as a sole, or even primary, tool for disseminating job vacancy information. While the Internet's use in the U.S. has expanded since the

adoption of the Commission's *Report and Order* in 2000, it has leveled off at approximately 164.14 million users, or just over half of the U.S. population (58.5%, January 2002: Nielsen Net Ratings). Reliance of the Internet as a major recruitment source will still leave a large number of potential interviewees out of applicant pools. However, AFTRA agrees that the Internet should be included as one type of recruitment method, and urges the Commission to add to the options menu that available jobs should be posted on a variety of Internet websites serving different communities.

33. Fourth, the Commission should mandate that in choosing their four options, licensees adopt a variety of efforts aimed at recruiting both entry-level staff and in training and promoting existing staff. Many AFTRA members report that while training and mentoring programs at stations are very effective tools for encouraging the professional development of existing staff, these programs have been severely curtailed in recent years. As proposed, licensees may comply with the Second NPRM by choosing all four options for one type of recruitment and not the other. In its new EEO rules, the Commission should encourage licensees to establish and maintain programs directed at internal promotion of staff as well to recruiting broad applicant pools.

34. Fifth, the Second NPRM suggests internships and scholarship programs as possible options. Many AFTRA members report that internships and scholarships are probably the most effective ways for new entrants to the field of broadcasting to obtain employment, but that these programs have also been severely curtailed in recent years. The Commission should highlight and encourage licensees to adopt these types of long range, ongoing programs in addition to programs aimed at filling specific vacancies.

35. Sixth, because discriminatory patterns in hiring, promoting and terminating broadcast and cable employees can be insidious and unintentional, the Commission should also suggest to licensees that they adopt internal training programs as part of their outreach and recruitment efforts. Such internal management trainings could include not only information about ways of avoiding direct forms of discrimination (such as in hiring, compensation, promotion, and termination practices), but also information about more indirect discrimination issues, including unbalanced and disparate work assignments, and other working conditions.

III. THE RECORD KEEPING REQUIRMENTS SHOULD BE CLARIFIED SO AS TO MAXIMIZE THEIR EFFECTIVENESS AS BOTH A METHOD OF OUTREACH AND A SIMPLE, NON-BURDENSOME MEASURE OF DEMONSTRATING COMPLIANCE

36. The Second NPRM proposes three (3) types of record keeping for broadcast entities: (i) an annual EEO public file, which should also be placed on a licensee's website if they have one; (ii) a "Broadcast Mid-term Report," formerly known as a Statement of Compliance (FCC Form 397), to be submitted in the fourth year of an eight year license period; and (iii) a EEO Program Report (FCC Form 396) once every eight years at renewal time. Second NPRM ¶¶ 34-36. Also, the Second NPRM proposes that licensees file a Broadcast Annual Employment Report (FCC Form 395-B) with the Commission for use by the Commission in analyzing industry trends and reporting to Congress. Second NPRM ¶51.

37. It is AFTRA's view that the most critical element of these record-keeping requirements is the maintenance of a complete and up-to-date public file of documents describing the licensee's outreach efforts and date regarding recent hires. AFTRA

believes that such public EEO files, particularly if they are made available to the public on a licensee's website, serves two equally vital purposes. First, this information can assist in promoting the regulatory goal of broad outreach and recruitment by providing all applicants (not just women and minorities) with critical information to assist them in finding employment. Second, maintaining these records is a simple and non-burdensome way for licensees to demonstrate their compliance with the regulatory scheme and to provide licensees, the Commission and the public, with information necessary to evaluate the efficacy of an individual licensee's outreach program and the regulatory scheme in general. However, in order to be effective, AFTRA proposes certain clarifications and amendments to the public file requirements.

A. Licensees Should Be Required to File All Information About Their Outreach and Recruitment Efforts in Their Public Files

38. The Second NPRM proposes that licensees collect certain items in a file for submission to the Commission and fewer and less specific items for placement in the licensee's public file. Second NPRM ¶ 16; Initial Regulatory Flexibility Analysis (IRFA). AFTRA submits that in order to best promote the goals of the regulatory scheme, licensees should be required to maintain only one EEO file, for both the public and the Commission, and that this file should contain all seven items now proposed only for collection for submission to the Commission.

39. Specifically, licensees should be required to maintain in their public EEO files, the following information (i) listings of all full-time jobs filled, identified by job title; (ii) the recruitment sources used to fill each vacancy, including any organizations which requested notification; (iii) the address/contact person/telephone number of each

recruitment source used to fill each position, (iv) dated copies of all advertisements, letters, etc. used to fill each vacancy; (v) documentation necessary to demonstrate performance of supplemental outreach initiatives, e.g. job fairs, mentoring programs; the total number of interviewees for each vacancy; and (vii) the date each job was filled.

40. The Second NPRM inexplicably proposes that the public file not contain the following: (i) listings of the organizations that requested notification; (ii) the total number of interviewees; (iii) copies of advertisements and other job notices; (iv) documentation of recruitment initiatives; or (v) the dates of hire. All potential job applicants (and not just minorities and women) would benefit greatly from this information.

41. All applicants (including minorities, women and all others who do not have personal connections to existing station staff and management) would benefit from having actual job announcements, the number of interviewees and dates of hire available in a station's public file. Making this information public would combat the strong prevailing perception that where jobs are "advertised," such advertisements are only for "show" because "inside" applicants have already been chosen for the job. With such public information, applicants can see the recruitment a station engages in prior to a hire and station management would also be able to monitor whether individual managers are adhering to the spirit as well as the letter of the rules. Also, listings of the organizations that requested job notifications, documentation of recruitment initiatives and actual job announcements would assist all job applicants in knowing where and how to look for future vacancies.

42. The Second NPRM also requests comment on whether licensees should keep

records on the recruitment sources for interviewees and hirees. Second NPRM ¶ 16(a).

AFTRA submits that documentation of the recruitment sources for interviewees and hirees is necessary to meaningfully evaluate the efficacy of a licensee's outreach efforts, as well as to evaluate whether the effect and utility of the regulatory scheme in general.

43. Further, there is no confidential element to this information, and AFTRA strongly agrees with the Commission that members of the public should be in a position to make known any problems they may perceive with a licensee's outreach and recruitment programs. Second NPRM ¶38.

44. Finally, it would be far less burdensome for licensees to keep one file of EEO materials, rather than two files with different contents. While licensees could keep the information in the public file for only one year, and move the information into another file after that time for future submission with their mid-term and renewal filings to the Commission, there is simply no reason for licensees to keep all such information in separate files as an initial matter. Indeed, it would be less burdensome for licensees to keep all such information in one public file, and then they will have this information ready for their mid-term and renewal submissions to the Commission.

**B. Licensees Should be Required to Maintain Contemporaneous,
Up-To-Date Records in its Public File**

45. AFTRA does propose one change to the public file requirement relating to the timing of the data collection. The former public file requirement, as proposed to be readopted, Second NPRM ¶ 36, contemplates that licensees place the information in their public files on an annual basis. AFTRA submits that the information would be far more useful to all potential job applicants and the public, and less burdensome on the licensee,

if such information were placed in the public file on a regular, contemporaneous basis. Maintenance of an up-to-date public EEO file would not be burdensome, as it would mostly require only the filing of documents used, and could be very useful for encouraging all possible job applicants in a local market.

C. The Commission Should Require Licensees to Identify Themselves in Their Form 395(B) Submissions, and the Commission Should Prepare Annual, Industry-Wide Summaries of the Data Collected for Public Review

46. The Second NPRM seeks comment on its FCC Form 395-B requirement. Second NPRM ¶¶ 51-52. AFTRA proposes that while it is not appropriate for this form to be submitted anonymously, and the Commission could hold the data confidential at least for a period of time, the Commission should still prepare annual, industry-wide summaries of the data for public review.

47. It is important that licensees be required to submit this data to the Commission, as required by Section 334 of the Communications Act, so that the Commission may fulfill its statutory mandate to monitor industry practices with respect to diversity and non-discrimination in broadcast employment. If this data were submitted anonymously, it would be impossible to ensure that all licensees are complying with the regulatory scheme, and would render suspect the data collected.

48. It is also critically important that the Commission use this data not only to make reports to Congress, but also to prepare reports for the public on the ethnicity and gender of employees in the broadcast industry. Currently, the only data available to the public is that collected by entities on a voluntary and limited basis, and such reports are necessarily limited in their scope and reliability. The public is entitled to current, reliable data on the

demographics of employment in broadcasting, a public resource, and the Commission is the only entity with the resources and data necessary to maintain and disseminate such data. While individual forms may be kept confidential by the Commission, at least for a period of time as urged by the Comments of EEO Supporters (MMTC et al.), filed April 15, 2002, Section VII(A), the Commission should aggregate and make public an industry-wide summary of this important data .

IV. THE COMMISSION SHOULD CONDUCT HEARINGS ON AGE DISCRIMINATION IN BROADCAST AND CABLE EMPLOYMENT.

49. Although AFTRA has long been troubled by complaints of age discrimination in the hiring, promotion, and termination patterns of broadcast networks and stations, AFTRA has seen such complaints soar in the last few years. More and more, it appears that consolidation and cost cutting in the industry, and the consequent reduction in the number and quality of on- and off-air jobs, has become a common basis for demotion and termination and that decisions of hiring, promotion, and career advancement are being influenced more and more by improper consideration of an individual's age. In fact, AFTRA has seen the numbers of age based discrimination complaints against broadcast entities increase significantly since 1997.

50. While age is not currently part of the FCC's anti-discriminatory mandate, the FCC has the statutory authority and responsibility to continually monitor the broadcast and cable industries to ascertain whether licensees are serving the public interest. An industry practice of demoting and terminating older employees on account of age is clearly not consistent with the public interest. Accordingly, it is within the FCC's

statutory authority to investigate such widespread complaints. Indeed, in 1969 and later in 1971, the Commission on its own initiative issued Petitions for Rulemaking for the purpose of issuing EEO rules governing discrimination on the basis of race and gender, respectively. *See Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, 18 F.C.C. 2d 240 (1960); 23 F.C.C.2d 430 (1970). It is now time for the FCC to review another area of potential discriminatory activity by licensees.

51. Pursuant to its statutory authority, the FCC should hold public hearings on the existence and scope of age discrimination in these industries.

VI. CONCLUSION

52. As Congress and the courts have long acknowledged, promoting diversity and combating discrimination in broadcast employment are two of the primary statutory mandates of the Commission. Following this statutory mandate, the Commission for many years, enforced EEO rules that helped to open up broadcast employment to women and minorities. Recently, as courts have found constitutional issues with continued enforcement of the EEO rules, the Commission has been faced with the challenging task of continuing its work to promote diversity in broadcast employment through alternate means.

53. The Commission's response of seeking to establish specific guidelines and record-keeping requirements for broadcast and cable employers to follow in widening their job

applicant pools is commendable. However, in order to maximize the potential impact of these rules, not just for minorities and women, but for all potential job applicants, certain aspects of the proposed EEO rules should be clarified and/or explained, and additional items should be added to the menu suggestions. Finally, in connection with this rulemaking, the Commission should conduct public hearings on the problem of age discrimination in broadcast and cable employment.

Respectfully submitted,

/s/

Ray Bradford
National Director,
Equal Employment Opportunities

Dated: April 15, 2002

/s/

Thomas R. Carpenter
National Director of
News and Broadcasting